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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 GABRIEL ALLEN ECKARD,

10 Plaintiff,

11 v.

12 ADAM CORNELL, *et al.*,

13 Defendants.

CASE NO. C19-1961-RSM

ORDER ADOPTING REPORT AND  
RECOMMENDATION TO DENY IFP  
STATUS

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of the  
15 Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. #4. Having reviewed  
16 Plaintiff’s Complaint, Dkt. #1-1, the R&R, and Plaintiff’s Objections, Dkt. #6, the Court agrees  
17 with the R&R to deny Plaintiff in forma pauperis (“IFP”) status pursuant to the “three strikes” rule,  
18 28 U.S.C. § 1915(g), and order that he pay the Court’s filing fee before proceeding with his  
19 complaint in this action.

20 Section 1915(g) of the Prison Litigation Reform Act (“PLRA”) denies IFP status to  
21 prisoners who have had three or more civil actions dismissed as frivolous, malicious, or because  
22 the case fails to state a claim upon which relief can be granted, unless the inmate is in danger of  
23 serious physical injury. 28 U.S.C. § 1915(g). Plaintiff has had more than three cases dismissed

1 that count as a strike under this provision. *See Eckard v. Rysz*, No. C19-813-RSM, Dkt. #9;  
2 *Eckard v. Caraway*, C19-679-RSL, Dkt. #10; *Eckard v. Jones*, C19-832-RAJ, Dkt. #10; *Eckard v.*  
3 *Aston*, C19-879-RAJ, Dkt. #10; *Eckard v. Zacharias*, C19-833-BJR, Dkt. #27; *Eckard v. Roy*, C19-  
4 834-RSL, Dkt. #8. The Court finds no error in the R&R’s conclusion that Plaintiff’s allegations  
5 are insufficient to trigger the “imminent danger” exception under Section 1915(g). Accordingly,  
6 the three-strikes rule applies.

7 Plaintiff objects to the R&R on the basis that the strikes do not count towards him “until  
8 he has exhausted his appeals.” Dkt. #6 at 1. There is no support for Plaintiff’s interpretation. The  
9 plain language of § 1915(g) precludes IFP status for a “civil action *or* appeal” so long as the  
10 prisoner has brought three or more “actions[s] *or* appeal[s].” 28 U.S.C. § 1915(g). Nothing in the  
11 text of the statute supports Plaintiff’s interpretation that a district court’s dismissal must be  
12 affirmed before it may count as a strike. *El-Shaddai v. Zamora*, 833 F.3d 1036, 1045 (9th Cir.  
13 2016) (“[T]he statute speaks only of dismissals, not affirmances. The choice of the word ‘dismiss’  
14 rather than ‘affirm’ in relation to appeals was unlikely an act of careless draftsmanship.”) (quoting  
15 *Thompson v. Drug Enf’t Admin.*, 492 F.3d 428, 436 (D.C. Cir. 2007)) (internal quotations omitted).  
16 Plaintiff’s reading of Section 1915(g) would allow a prisoner three frivolous civil actions and  
17 potentially three frivolous appeals. The Ninth Circuit has found this interpretation contrary to  
18 Congress’ intent in passing the PLRA. *Rodriguez v. Cook*, 169 F.3d 1176, 1178 (9th Cir. 1999).

19 The remainder of Plaintiff’s Objections include various threats of violence against this  
20 Court without legal argument. *See* Dkt. #6 at 1-2.

## 21 CONCLUSION

22 Accordingly, having reviewed Plaintiff’s complaint, the Report and Recommendation of  
23 Judge Tsuchida, and the remainder of the record, the Court hereby finds and ORDERS:

- 1) The Report and Recommendation, Dkt. #4, is APPROVED and ADOPTED.
- 2) Plaintiff's IFP status is DENIED pursuant to 28 U.S.C. § 1915(g). Plaintiff is ordered to pay the Court filing fee of \$400.00 no later than **thirty (30) days** from the date of this order. Failure to pay the filing fee will result in dismissal of this case without prejudice.
- 3) The Clerk shall send a copy of this Order to Plaintiff and to the Honorable Brian A. Tsuchida.

DATED this 10 day of February 2020.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE